IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9056 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI N MAKWANA

Versus

DIVISIONAL SECURITY COMMISS (R.P.F.)

Appearance:

MR DESAI for Mr YN OZA for Petitioner

MR MJ THAKORE for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/01/2001

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner before this Court is a former employee of the Western Railway and challenges the order

dated 10th March, 1992 made by the Divisional Security Commissioner [RPF], Vadodara, the respondent no. 1 herein and the order dated 6th October, 1992 made by the Deputy Chief Security Commissioner, in appeal. The facts leading to the present petition are as under :-

3. In or around the year 1970, the petitioner was appointed as a Constable under the Railway Protection Force Act, 1957 in the Western Railway. On 6th July, 1991, disciplinary action was initiated against the petitioner by issuing a chargesheet. It was alleged that on 11th January, 1991, while under sick list at MALB at about 19.00 hours, the petitioner went to the Office in the drunken state and started abusing the Railway Protection Force staff and officers at the main gate. The constable on duty Jagdish Prasad who was on the main gate, objected but the petitioner did not listen to him and continued to abuse RPF staff and officers. In the meanwhile, head constable Bhoor Singh who was on general supervision duty reached the main gate and tried to pacify the petitioner but instead of listening to him, the petitioner slapped the head constable three times on his face on the left side and gave him filthy abuses. The petitioner was thus charged for committing misconduct of acting in a manner unbecoming of a member of the armed force and in indisciplined manner. After holding due inquiry, the imputation of charge made against the petitioner was held to be proved. By impugned order dated 10th March, 1992, the disciplinary authority removed the petitioner from service. Feeling aggrieved, the petitioner preferred departmental appeal which was dismissed by the appellate authority on 6th October, 1992. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Desai has submitted that there is inherent lacunae in the manner in which the disciplinary inquiry had been conducted against the petitioner inasmuch as the petitioner was not given a notice before imposing punishment upon him nor was he furnished copy of the inquiry report. The impugned order of punishment has thus been made in violation of principles of natural justice and has gravely prejudiced the defence of the petitioner. Besides, the petitioner was not given the assistance of a next friend. Both the authorities below have failed to appreciate the evidence in its correct perspective. At last, he has submitted that in any view of the matter, the punishment of removal from service is not commensurate to the gravity of the guilt established against the petitioner. In support of his contentions, he has relied upon the judgments of the Hon'ble Supreme

Court in the matters of Union of India & Ors. v. Mohd. Ramzan Khan, [AIR (1991) SC 471]; and of Rama Kant Misra v. State of U.P & Ors., [AIR (1982) SC 1552]. He has also relied upon the judgment of this Court in the matter of R.K Divyeshwar v. State of Gujarat & Anr., [1999 (1) GLR 47].

Mr. Thakore has, in answer to the petition, submitted that it is true that the petitioner was not served copy of the inquiry report, however, the same shall not vitiate the inquiry or the order of punishment. He has submitted that unless the petitioner proves that non-supply of inquiry report has caused prejudice, the same shall not vitiate the disciplinary inquiry or the order of punishment. He has submitted that along with the order of punishment, the petitioner was furnished copy of the inquiry report and the petitioner had taken all possible contentions before the appellate authority. The appellate authority has considered all the contentions raised by the petitioner. Thus, the petitioner had already had an opportunity to represent against the finding recorded by the enquiry officer and the recommendation made by him. He has relied upon the judgment of the Hon'ble Supreme Court in the matter of Managing Director, ECIL, Hyderabad & Ors. v. B Karunakar & Ors., [(1993) 4 SCC 727]. He has further submitted that appreciation of evidence is beyond the scope of the petition under Art. 226 of the Constitution of India and this Court exercising its extra ordinary jurisdiction under Art. 226 of the Constitution will not reappreciate the evidence and substitute the findings recorded by the authorities below. He has also relied upon the statements of objects and reasons of the Railway Protection Force Act, 1957 and has submitted that the Railway Protection Force is an Armed Force and highest degree of discipline is required to be maintained. He has submitted that indisciplined persons like the petitioner if continued in the Force the purpose of the Act shall be frustrated. He has also relied upon the affidavit made on behalf of the respondents and submitted that the past service record of the petitioner is also not commendable in as much as earlier, on several occasions, disciplinary action had been taken against the petitioner and some 22 punishments ranging from censure to stoppage of increments and reduction in pay, had been imposed upon the petitioner, the impugned order, therefore, does not warrant interference.

In re-Mohd. Ramzan Khan [Supra], the Bench of Three Hon'ble Judges of the Supreme Court was considering whether the deliquent was entitled to the report of the

inquiry officer recording a finding of guilt against the deliquent. The Hon'ble Court, in paragraph 13 of the judgement has held that, `..The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the deliquent is concerned. In a quasi-judicial matter, if the deliquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected." The Court further held that, `..we, therefore, come to the conclusion that supply of a finding of the inquiry report alongwith the recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the deliquent would, therefore, be entitled to the supply of a copy thereof.' The Bench of Five Hon'ble Judges of the Supreme Court had an occasion to consider the above judgment in Re-Mohd. Ramzan Khan [Supra] in the matter of Managing Director, ECIL, Hyderabad [Supra]. In paragraph 30 of the judgment, the Court held as under :-

`30. Hence the incidental questions raised above may be answered as follows :

[i] xx xx xx
[ii] xx xx xx
[iii] xx xx xx
[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether the Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the

rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence, question (iv) is answered accordingly.

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the fact and circumstances of each case. Where, therefore, even after the furnishing of the

> report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an `unnatural expansion of natural justice' which in itself is antithetical to justice.

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment....'

In the matter of Ramakant Misra [Supra], the Hon'ble Court while dealing with the order of dismissal of a workman under the Industrial Disputes Act, 1947 and the scope of Section 11A thereof has held that, `..the respondent management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years' service he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper or disclosing a threatening posture.... Indiscreet, improper, abusive language may show lack of culture but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service.'

In the matter of R.K Divyeshwar [Supra], Mr. Desai has specifically relied upon paragraph 26 of the judgment and more particularly clause-4 thereof. In paragraph 26 of the judgment, the Court has held that, `thus, appreciation of evidence is strictly prohibited while exercising powers by the High Court .. .. But the jurisdiction of the High Court under Article 226 of the Constitution of India has been made very limited and this Court is empowered to judicial review in exercise of its jurisdiction only in 4 types of cases -

(1) xx xx xx
(2) xx xx xx
(3) xx xx xx
(4) Fourth type of cases were where punishment awarded shocks the judicial conscience or punishment/penalty awarded is disproportionate, the High Courts are permitted to exercise judicial review in this respect.'

As observed above, the appreciation/ reappreciation of evidence in a disciplinary action by the High Court in exercise of power under Article 226 of the Constitution is not permissible. The contention of Mr. Desai that the evidence has not been properly appreciated and the petitioner requires to be exonerated on reappreciation of evidence, therefore, requires to be rejected. Though Mr. Desai has submitted that petitioner was not given assistance of a next friend, the submission is not supported by necessary averments. It is not the case of the petitioner that he had applied for permission to appear through a next friend and that such opportunity was denied. The contention, therefore, requires to be rejected. As regards the inquiry report, there is no dispute that the copy of the report was not

furnished to the petitioner until after the order of punishment was made. The inquiry report was furnished to the petitioner alongwith the order of punishment and thus the petitioner had no opportunity to make a representation against the finding of guilt recorded in the inquiry report before the disciplinary authority. However, in view of the judgment of the Supreme Court in the matter of Managing Director, ECIL [Supra], I am of the view that the said laxity shall not vitiate the inquiry or the order of punishment, as held by the Hon'ble Supreme Court before such an action is adopted, the High Court shall ascertain whether any prejudice has been caused to the delinquent. In all such cases, the Court should cause the copy of the report to be furnished to the aggrieved employee, if he has not already secured the same before coming to the Court and give an employee an opportunity to show how his case was prejudiced because of the non supply of the report. Such an action is not warranted in the present case since the petitioner has already been furnished copy of the inquiry report alongwith the order of punishment. The petitioner has also availed of an opportunity to represent against the said report before the appellate authority and the appellate authority having considered the contentions raised by the petitioner, has confirmed the order of punishment. Thus, in my view, in the present case, the petitioner has been caused no prejudice nor the order of punishment shall be vitiated on that count also.

This brings me to the last question whether the punishment of removal from service is excessive or too harsh compared to the gravity of the misconduct committed by the petitioner. The petitioner is a member of the Railway Protection Force, constituted for ensuring better protection and security of the Railway properties. Under the Act-60 of 1985, the Force is made an Armed Force of the Union of India to make it more efficient and effective for discharging its responsibilities. Thus, the petitioner was a member of Armed Force of the Union of India and the high standard of discipline is expected from every member of the armed forces. The petitioner had not only acted in an indisciplined manner but had gone further and had assaulted his superior officer. Such indisciplined behaviour of a member of the armed force cannot be viewed lightly. If such persons are dealt with lightly, the same should have an adverse effect on the discipline of the entire Force. Further, even the past conduct of the petitioner is not commendable, as pointed out in the counter affidavit and not disputed by the petitioner. Keeping in view the gravity of guilt established against the petitioner and

his past service record, the impugned order of punishment cannot be said to be excessive or not commensurate with the gravity of the guilt established against him. The order of punishment, therefore, does not warrant interference.

The petition is dismissed. Rule is discharged.

[Miss R.M Doshit, J.]

Prakash*